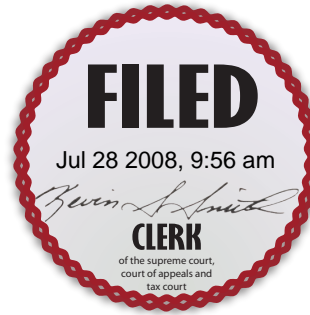


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MECHELLE SAFFOLD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0712-CR-669

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0702-FB-20075

July 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Mechelle Saffold appeals his sentence for Neglect of a Dependent, as a Class B felony.¹ We affirm.

Issue

Saffold raises the sole issue of whether his sentence is inappropriate in light of the nature of the offense and his character.

Facts and Procedural History

Saffold and his wife, Bessie Saffold, adopted eight children, five of whom were under age eighteen at times relevant to this appeal. On January 8, 2007, Bessie forced their seven-year-old son, P.S., into a bathtub of scalding water. P.S. suffered second- and third-degree burns from his feet to his waist. On January 29, 2007, three weeks later, P.S.'s biological half-brother C.S. contacted his former foster mother regarding P.S.'s injuries.

The State charged Saffold with Neglect of a Dependent, as a Class B felony.² Saffold pled guilty to the charged offense. The trial court sentenced Saffold to the advisory, ten-year term of imprisonment for a Class B felony, with six years suspended. He now appeals.

Discussion and Decision

Saffold argues that his sentence is inappropriate. Under Indiana Appellate Rule 7(B), this “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the

¹ Ind. Code § 35-46-1-4.

² In the same Information, the State charged Bessie Saffold with five counts of Battery, two counts of Criminal Confinement, and Neglect of a Dependant.

offense and the character of the offender.” Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

Here, the plea agreement provided for a cap of fifteen years on executed time.³ In pleading guilty to this crime, Saffold admitted that he knowingly or intentionally

failed to provide medical care and treatment for burns suffered by [P.S.], and that the failure . . . did result in serious bodily injury to [P.S.], that is: extreme pain, and/or serious permanent disfigurement and/or the permanent or protracted loss or impairment of the function of a bodily member or organ.

Appendix at 38. In its sentencing analysis, the trial court noted Saffold’s guilty plea to the charged offense, his lack of any prior convictions, his benefit to co-workers and friends at church, and the “extraordinary” delay P.S. had to endure before receiving medical care. Transcript at 120. It found that the aggravating and mitigating circumstances “balance” and sentenced Saffold to the advisory, ten-year term of imprisonment. Id. at 121. The trial court ordered:

I’m going to suspend six years, place Mr. Saffold with the Department of Correction for the four years but, after one year, one year from today [Oct. 24, 2007], I will reconsider placement or consider suspending his sentence depending upon his conduct record while at the Department of Correction.

Id.

³ The plea agreement also provided that “the sentence recommended and/or imposed is the appropriate sentence to be served pursuant to this agreement.” Appendix at 60 (emphasis added). On appeal, however, the State makes no argument regarding this provision.

As to the nature of the offense, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Childress, 848 N.E.2d at 1081. P.S. was burned on January 8, 2007.⁴ Saffold and his wife “treated the burns with epsom salt, peroxide, Vaseline and gauze.” Appellant’s Brief at 6. In pleading guilty, Saffold testified as follows:

Court: You are accused of not taking the child in for medical treatment
...

A: Yes, sir.

Court: ... after it was obvious the child needed medical treatment.

A: Yes, sir.

...

Court: Now, is what [the prosecutor] said regarding your failure to take the child in for medical care true?

A: Yes, sir.

...

Pros: Mr. Saffold, were you aware of the extent of your son’s injuries?

A: No, I was not. I didn’t know it was that bad.

Pros: Well, okay, were you aware that your son had burns from his buttocks and genitals all the way down to his feet?

A: I was aware that he was burned on his feet and his behind but not in the front.

Pros: Okay, you knew he was burned on his buttocks and his feet?

A: Yeah, yes.

⁴ It was not alleged that Saffold caused P.S. to sit in the scalding water.

Pros: Had you seen the injuries?

A: One time I did.

...

Court: How many days before the child was taken to the doctor were you aware of the burns on the feet and the rear end?

A: I don't know, probably a week or so.

...

Pros: And did you fail to take the child to the doctor?

A: Yes, I did.

Court: It was obvious to you from what you were seeing that the child needed a doctor's care, is that right?

A: Yes.

Court: And you didn't take the child to the doctor?

A: No.

Court: And you're the adoptive father, is that right?

A: I thought we could handle it ourselves.

Tr. at 19-22.

Detective Genae Gehring observed P.S. on January 30, 2007, twenty-two days after the incident. P.S. was in extreme pain and "was walking very stiffly, and both blood and a green-colored fluid were draining from his feet." Appellant's Br. at 6. P.S. was so unresponsive that he appeared to be "doped." Tr. at 53. He was seated on a pillow. Detective Gehring also saw P.S. at Riley Hospital that evening. She understood P.S.'s burns

to be severely infected and close to becoming septic. Riley physicians had not yet begun removing P.S.'s underwear because it was attached to his skin. P.S. had at least two surgeries. He wore burn pants until August 2007 and was still wearing burn-treatment material on his feet as of the sentencing hearing in October 2007. His scarring will be permanent.

Saffold was arrested days after authorities learned of P.S.'s injuries. When the search warrant was executed, the children's drawers were empty and their beds were stripped. Neighbors informed Detective Gehring that the Saffolds had removed many items from the home on the night of January 30, 2007.

With respect to Saffold's character, he had no prior convictions. For purposes of the pre-sentence investigation report, Saffold wrote:

We have treat other children with burns, and thought it was something we could handlier our self. Sorry for the mistake. And will never happen again. Because we love children.

Pre-Sentence Investigation Report at 4. The Saffolds were receiving Adoption Assistance for each of their children under age eighteen: a total of \$6453.44/month for all five children.

Some of Saffold's children testified at the sentencing hearing. C.S. testified that Saffold would administer whippings with a belt and talk with the children. Bessie would beat the children with a stick—often when Saffold was away from home. However, Saffold saw Bessie strike multiple children in the face. At least once, Saffold was downstairs watching television when Bessie beat C.S. with a plunger stick. When asked what should happen to Saffold, C.S. stated "I'd just as soon him go to jail." Tr. at 32.

Ni.S. testified that it was apparent that P.S. was hurt because “he would be limping, he wouldn’t walk like he usually was so I knew something was wrong.” Id. at 44. Neither Ni.S. nor D.S. saw Saffold do anything to help P.S. with his injuries. Na.S. testified that Saffold “would talk to [Bessie] and tell her that it’s not always for us to get a whipping.” Id. at 39.

To his credit, Saffold was described as an “ideal” employee. Id. at 71. His former supervisor described him as “A-one” and “topnotch.” Id. at 72. “He always treats people fairly. In dealing with me, he’s just one of the best people I’ve ever known in my life.” Id. Willy Jones worked with Saffold and observed the Saffold family at church functions and on vacations.

I observed him to be a good parent, you know, I always seen him, he’s always smiling, he treat them, you know, good as far as I seen, you know, and all the other kids. Every time they’d have a gathering at their house they’d have all the kids over, you know, and as far as I know everything went well.

Id. at 80. A minister described Saffold as “a good father.” Id. at 85. “I know that he was treating [the children] all right at the church. When I seen him at his home, I visited his home on several occasions and I found the same thing there.” Id. at 87. A woman from church testified that Saffold always played with his children and that she would not have any concerns that he would harm a child.

Finally, Bessie’s daughter, Yolanda Moore, was six or eight when Saffold first met Bessie. Moore described Saffold as “a very loving father, dedicated to his children.” Id. at 94. He did not abuse or neglect her.

[M]y father’s an honest man and he’s a loving father and he does all he can do to help anyone. He always has a kind word to say. As I was coming up as a child, when I got into little altercations, he would always just talk to me. Now,

as an adult and married with children, if I have little problems going on now, the first thing he always tell me just to pray and he always gives me a biblical scripture to read and he's always, he listens to anything I have to tell. He doesn't judge, he doesn't throw out his opinion that much. He just sits back and listens and tells me the decision is mine, I need to do what I need to do to make the best decision.

Id. at 95.

Saffold's failure to secure medical attention for his child is beyond comprehension. P.S. struggled to walk; was pained to sit. Even three weeks after the incident, his wounds emitted blood and green fluid. Saffold admitted that he had seen at least some of the injuries and that P.S. needed a doctor's care. P.S.'s brother, a child himself, understood that P.S. needed help and he took action. Without C.S., it is unclear what might have happened to P.S. Saffold knowingly failed his child. Based upon our review of the record and our consideration of the trial court's decision, we conclude that Saffold's sentence for Neglect of a Dependent, ten years with six of those years suspended, is not inappropriate.

Affirmed.⁵

FRIEDLANDER, J., and KIRSCH, J., concur.

⁵ As noted above, the trial court will review Saffold's conduct as of October 24, 2008 for purposes of considering whether to suspend the remaining nine years of Saffold's sentence. As this Court does not deliver advisory opinions, we do not address at this time the wisdom of this course of action. Richardson v. Calderon, 713 N.E.2d 856, 863 (Ind. Ct. App. 1999), trans. denied.